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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,920	10/30/2003	Craig Henry Becker	AUS920030827US1	9648

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IBM CORP (YA)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS, TX 75380

EXAMINER

SAUNDERS JR, JOSEPH

ART UNIT	PAPER NUMBER
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2615

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/697,920

Applicant(s)

BECKER, CRAIG HENRY

Examiner

Joseph Saunders

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 12 and 14-22 is/are rejected.
- 7) ☒ Claim(s) 2 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. This office action is in response to the communications filed August 1, 2007.

Claims 1 – 6 and 12 – 22 are currently pending and considered below.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17 – 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 17 as amended is still seeking protection for a “computer program product”, as evidenced by the claimed “product” being nothing more than “first instructions” and “second instructions”, and therefore such claimed computer programs do not define any structural interrelationships between the computer program and other claimed elements of a computer which permit the computer program’s functionality to be realized. In contrast, a claimed “computer-readable medium encoded with a computer program” is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program’s functionality to be realized, and is thus statutory. Therefore, instead of claiming, “a computer program product encoded in a computer readable medium” the applicant should claim, “a computer readable medium encoded with a computer program product”.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3 – 6, 12, 14 – 17, and 19 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bharati in view of James (US 6,910,038 B1), hereinafter James, and McMahon et al. (US 2004/0019396 A1), hereinafter McMahon.

Claims 1, 12, 17, and 22: Bharati discloses a method in a data processing system for indicating an end of a session, the method comprising: an audio file that has a length equal to a duration of a session ("the length of the four OM Timers: 5-Minute, 10-Minute, 20-Minute, 30-Minute"), wherein the audio file includes a silent segment followed by an audio segment ("This CD is extremely simple. It is like a clock, an "OM Clock" in which there is the voice of a single OM, followed by complete silence, and then ending with a single OM.") and wherein the audio segment provides an indication of the end of the session when encountered during playing of the audio file (The single OM at the end of the track indicates the end of mediation time.). Bharati further discloses wherein a plurality of audio files are created on the storage medium ("There are five tracks on the CD.") in which each audio file corresponds to a given user session ("the length of the four OM Timers: 5-Minute, 10-Minute, 20-Minute, 30-Minute" and "All you have to do is

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click the track number on your CD player that matches the length of time of the practice.”).

Bharati does not disclose receiving an identification and the duration of a session from a data structure containing a schedule; and responsive to receiving the identification and the duration of the session, creating an audio file on a storage medium, according to the schedule. Since Bharati discloses the product of a CD containing an audio file that has a length equal to a length of a session, wherein the audio file includes a silent segment followed by an audio segment and wherein the audio segment provides an indication of the end of the session when encountered during playing of the audio file but does not disclose how to make such a CD or how a user could customize such a CD as is well known in the art, therefore one would be inclined to look elsewhere for such a teaching.

James discloses a process, an apparatus, a system, a device, a method, and a computer readable media (Column 3 Lines 3 – 6) for recording to an optical media and further discloses, “Optical disc recording commonly involves recording (sometimes referred to as “burning) audio tracks or data files on one or more spiral tracks on an optical disc, Column 1 Lines 26 – 30. Although not explicitly disclosed a host system (computer system) contains a bus as illustrated in Figure 2A connecting the blocks 102, 202, 204, 112, and 114, a memory stores the CD recording software application or instructions connected to the bus, and processing occurs based on the instructions therefore a processing unit is also present in order to complete the task of recording an optical disc (Column 1 Line 36 – Column 2 Line 30). James also discloses, “the ordering

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data structures (schedule) are passed from the file system database block 202 (data structure) to the CD recording engine 204 in the order in which the associated data files (sessions) will be written to the optical disc. In one embodiment, the CD recording engine 204 then follows the pointers (identification of a session) of the ordering data structures (schedule) and begins reading the data files (sessions) into the optical CD recording circuitry 112. It is the CD recording circuitry 112 that accomplishes the actual writing or burning of the data files (sessions) to the optical disc 114," Column 7 Lines 26 – 36. James further discloses where "the file size identifies the exact size of the file in bytes (or other suitable units of measure)," Column 5 Lines 9 – 14. McMahon discloses that to simplify the burning process a graphical user interface or CD project screen is often used to simplify the burning process and that the duration of a track has a direct correspondence to the size of the file and therefore is used as an alternative to managing the free space remaining on a CD when a playlist is created by a user (Figure 5 and Paragraph 5) and therefore is also passed to a program responsible for burning a CD. McMahon also discloses that the process of burning a CD also has the advantage of a user customizable schedule or playlist thereby allowing the reordering of songs from a source location (Paragraphs 2, 10, and 11).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to make a CD or customize the CD of Bharati containing an audio file that has a length equal to a duration of a session, wherein the audio file includes a silent segment followed by an audio segment and wherein the audio segment provides an indication of the end of the session when encountered during playing of the audio file as

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disclosed by the method of James and McMahon thereby allowing for "a method for processing files that minimizes the generation of lists that catalog location and attribute information about each data file before writing to the optical disc media," James Column 2 Line 66 – Column 3 Line 2 while also simplifying the reordering or creation of a playlist by a user through the use of the duration of the sessions and a graphical interface (McMahon, Paragraphs 2, 10, and 11).

Claims 3, 14, and 19: Bharati, James, and McMahon disclose the method, processing system, and computer program of claims 1, 12, 17, and 22, and James further discloses wherein the receiving step comprises: receiving an identification of the session from a scheduling program (Column 3 Lines 25 – 37).

Claims 4, 15, and 20: Bharati, James, and McMahon disclose the method, processing system, and computer program of claims 1, 12, 17, and 22, and Bharati further discloses wherein the storage medium is one of a compact disc ("CD"), a digital versatile disc, a flash memory, or an audio tape.

Claims 5, 16, and 21: Bharati, James, and McMahon disclose the method, processing system, and computer program of claims 1, 12, 17, and 22, and Bharati further discloses wherein the audio segment is music (the chant "OM").

Claim 6: Bharati, James, and McMahon disclose method of claim 1, but *do not disclose* wherein the silent segment is 59 minutes long and the audio segment is 1 minute long for a 60 minute session. It would have been an obvious matter of design choice to include a silent segment of any duration followed by an audio segment of any duration, since the only purpose of the audio segment is to indicate the end of a period of time and therefore it appears that the method would perform equally well with silence and audio segments of any duration, for example the long period of silence followed by an "OM" totaling 5, 10, 20, and 30 minutes as disclosed by Bharati.

Allowable Subject Matter

5. Claims 2 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 3 – 7, 12, 14 – 17, and 19 – 22 have been considered but are moot in view of the new ground(s) of rejection necessitated by the amendment of the limitation "duration".

Further, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "calendar" information or entries) are not recited in the rejected claims 1, 3 – 7, 12, 14 – 17, and 19 – 22. Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And finally, as taught by the new rejection above, it is well known in the art that during the creation of a CD the CD "generic" or "predefined" tracks can be reordered through the use of a playlist or schedule thereby the creation of audio files on the CD are customizable sessions according to a schedule.

7. Applicant's arguments, see Paragraph V on page 7, filed August 1, 2007, with respect to 2, 13, and 18 regarding "a file for a calendar program" used to establish or determine a length equal to the duration of the session have been fully considered and are persuasive. The rejection under 35 U.S.C. 103 of May 1, 2007 has been withdrawn.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Saunders whose telephone number is (571) 270-1063. The examiner can normally be reached on Monday - Thursday, 9:00 a.m. - 4:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JS
October 11, 2007


SINH TRAN
SUPERVISORY PATENT EXAMINER